

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES of AMERICA

Case Number: 1:05-cr-10106-DPW

v.

MICHAEL O'DONNELL,  
Defendant.

ASSENTED-TO MOTION TO CONTINUE

N O W C O M E S defendant, MICHAEL O'DONNELL, by his attorney, and moves, respectfully, under the Fifth Amendment, for an order enlarging time to object to the PSR and continuing the sentencing hearing. Defendant needs more time to obtain background information and an expert opinion on mental condition.

Counsel's investigation of earlier legal files reveals that Mr. O'Donnell has a complex social and institutional history beginning in early childhood. Counsel has reviewed and copied portions of the Federal Defender's files and related materials and believes that there are arguments for mitigation that, if accepted by the Court, would lessen Mr. O'Donnell's punishment. Counsel believes it would be reasonable to pursue his investigation of Mr. O'Donnell's background and recent US law (albeit in the capital arena) supports such a view. See, *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d 471 (2003). In *Wiggins*, the Supreme Court granted habeas relief on claim that trial counsel was ineffective for failing to investigate and present "evidence of his unfortunate life history" at

his capital sentencing proceedings. The Court of Appeals' assumption that the investigation was adequate, thus reflected an unreasonable application of *Strickland*. The Supreme Court found, therefore, that the lower courts' deference to counsel's strategic decision not 'to present every conceivable mitigation defense,' despite the fact that counsel based this alleged choice on what we have made clear was an unreasonable investigation, was objectively unreasonable. *Id.*

Additionally, counsel has been ordered to try *US v. Farese & Armstrong* 1:05-cr-10124-WGY on February 27, 2006 and will not be able to devote sufficient time and attention to this matter.

The defendant's objections to the PSR are due on February 16, 2006. Sentencing has been scheduled for March 9, 2006. Because of the anticipated difficulty in obtaining certain childhood records, counsel requests that these dates be moved forward by 60 days to April 17 for objections to the PSR and the week of May 1, 2006 for hearing.

Counsel certifies in accordance with LR 7.1 that he has conferred with AUSA Donald Cabell and that the government assents to this motion. Mr. O'Donnell is incarcerated and acknowledges that this motion may delay the disposition of his case.

Dated this 14<sup>th</sup> day of February, 2006 at Boston, Massachusetts.

/s./ Kevin L. Barron

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CERTIFICATE OF SERVICE PURSUANT TO  
LR's 5.2 & 5.4 ELECTRONIC FILING

I hereby certify that a true copy of the above document was served upon Assistant United States Attorney Donald Cabell, Esq., the attorney of record for the United States by Electronic Case Filing in compliance with L.R. 5.4 on February 14, 2006. There are no parties requiring service by mail.

/s./ Kevin L. Barron

Kevin Lawrence Barron 550712